Office-Supreme Court, U.S.
FILED
MAR 16 1967
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1966.

No. 960.

RUTH ELIZABETH ALLEN, Executrix of the Estate of WILLIAM C. ALLEN, Deceased, and Forty-four Others Herein Specifically Identified,

Petitioners,

v.

MATHIASEN'S TANKER INDUSTRIES, INC., and UNITED STATES OF AMERICA,

Respondents.

PETITION FOR REHEARING.

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
Lafayette Building, Eighth Floor,
Philadelphia, Pennsylvania. 19106
Counsel for Petitioners.

International, 711 So. 50th St., Phila., Pa. 19143—Tel. SA 7-8711 Area Code 215

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966.

No. 960.

RUTH ELIZABETH ALLEN, EXECUTRIX OF THE ESTATE OF WILLIAM C. ALLEN, DECEASED, AND FORTY-FOUR OTHERS HEREIN SPECIFICALLY IDENTIFIED,

Petitioners,

v.

MATHIASEN'S TANKER INDUSTRIES, INC., AND UNITED STATES OF AMERICA,

Respondents.

PETITION FOR REHEARING.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners, Ruth Elizabeth Allen, Executrix of Estate of William G. Allen, deceased and forty-four others specifically identified in the Petition for Certiorari, pray that this Court grant rehearing of its Order of February 20, 1967, denying petition for writ of certiorari, and that a writ of certiorari issue to review the judgment of the Court of Appeals for the Third Circuit in the above entitled case, as prayed for in the petition filed January 10, 1967, herein.

The issues presented in the petition for certiorari are of such overwhelming importance and magnitude as, in the normal course, have impelled this Court to invoke its powers of review. It would appear that this Court's failure to do so herein stems from the false impression, conveyed by Respondents' reply to the petition, that the problems involved have been corrected by legislation and that they are

confined to a mere handful of seamen. The truth is that the legislation did not reach the question, and that the issue presently extends to a great percentage, involving thousands, of seamen—which percentage becomes greater every year with the ever-growing interest of the Government in the merchant marine.

At stake is the right to a jury trial, and a verdict for prejudgment interest covering eight years of litigation for 44 claimants.

The respondents urge that Mathiasen Tanker Industries, Inc. was an "agent" within the meaning of the Suits in Admiralty Act and therefore immune from suit for its own torts, leaving a remedy only against the United States. Recognizing the sheer sophistry of its argument on this point, respondents state that there are only about thirty ships involved under contract to the Navy, implying that these are the only ships involved. Not only is this figure challenged, but it is significant that respondents omit mention of the vast number of vessels under contract to other departments of the Government. Moreover, if the Government should take over the Merchant Marine, as it has threatened to do, and contract the vessels out for operation by private shipping companies, then all of the private shipping companies will be immune from suit despite their own personal torts.

Heretofore, private shipping companies have always been responsible for their own torts. If the decision below is permitted to stand, it will be an open invitation to all private shopping companies simply to enter into an operating agreement with the Government in order to escape their traditional responsibilities. Respondents' attempt to minimize the scope of the broad issue should serve to emphasize its really great magnitude. Thousands upon thousands of seamen and other maritime workers will be deprived of jury trials, and the private operators will receive a windfall by escaping prejudgment interest under the immunity given by the decision below.

The insurance companies who underwrite the liability of the private operators and our Government are notorious for procrastinating tactics which protract litigation for an average of five to ten years. The old platitude of justice delayed is justice denied is peculiarly applicable. In addition, expenses which are not recoverable mount up for the distressed litigants, and an award of prejudgment interest is the only remedy available to set off against these losses and against the hardship of an eight-year waiting period, as in the instant case. The claimants are at least entitled to a "time at bat" in this Court before being deprived of these most substantial and much-needed remedies.

Respondents also argue that the amendment of 1960 to the Suits in Admiralty Act made the question moot so far as future cases involving prejudgment interest are concerned. This likewise is an utterly incorrect statement. Respondents base this contention on the 1960 amendment to the Suits in Admiralty Act. That amendment simply deleted the limitation restricting that act to vessels used for commercial purposes. It did not repeal the Public Vessels Act nor did it repeal the provision in that act limiting the payment of interest from the date of judgment rather than from the date suit is started. Respondents will be completely free, in the absence of an expression from this Court, to contend in the future exactly the opposite from what they have represented here to the Court. Indeed, respondents have already taken a firm position that vessels operating under agreements as in this case are public vessels governed by the Public Vessels Act, regardless of the amendment. Respondents' representation to this Court is obviously made for the sole purpose of influencing this Court to deny the Petition for Certiorari despite the expressed intention to do the contrary.

The inference is also advanced that the 1960 amendment permits the seamen to sue the private shipping companies under the operating agreements. This is also an incorrect assumption. The 1960 amendment has absolutely

nothing to do with this issue. Respondents have made this abundantly clear in the position they have taken in other cases. Respondents continue to seek immunity for these operating agents regardless of the amendment, and if the decision below is not taken for review by this Court, respondents will have won a victory by talking out of both sides of their mouths.

The operating agreement requires the private shipping company—as Mathiasen here—to procure insurance to cover all liability for personal injury. It is, thus, the insurance company which gains the windfall, and the operating company gains also by reduced insurance premiums—all at the expense of the injured claimants.

No Court has stated that the 1960 amendment supports the implications made by respondents. If respondents' interpretations are to be given any consideration, this Court should open the matter for review and consider the arguments of claimants as well.

The issues involved in this proceeding are not only of the greatest magnitude, but, contrary to the respondents' representations to this Court, they unquestionably will grow and become more widespread and more prejudicial to an ever-increasing number of seafaring personnel. Certiorari is fully warranted in this case where the principles involved will adversely affect countless seamen.

CONCLUSION.

For the reasons here set forth and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Court of Appeals for the Third Circuit.

Respectfully submitted,

ABRAHAM E. FREEDMAN,
MARTIN J. VIGDERMAN,
FREEDMAN, BOROWSKY AND LORRY,
Counsel for Petitioners.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of this Court.

Counsel for Petitioner.